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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ALONSO RUIZ,

Defendant and Appellant.

H044308 (Santa Clara County Super. Ct. No. C1479246)

After a jury trial, defendant Alonso Ruiz was found guilty of making criminal threats and actively participating in a criminal street gang. On appeal, he contends that the trial court violated the Sixth Amendment by admitting testimonial hearsay statements offered by the prosecution's gang expert, contrary to *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). We agree that error occurred, but it was not prejudicial. Accordingly, we will affirm the judgment.

Background

1. The Charged Offenses

In January 2014¹ the victim, Elias Orozco, was a private security guard working for Admiral Security Services in the Santee neighborhood of south San Jose.

On January 27 Orozco was on routine patrol with Bruce Hernandez, the Santee area manager, when they saw eight to 10 suspected gang members loitering on the Santee property. Ruiz was with the group. Hernandez had talked to Ruiz about 20 times before; he had seen him five to 10 times a day over nearly a year.

¹ In this section all further references to dates are to the year 2014.

Some of this group were drinking alcohol or smoking. Hernandez asked them to leave, saying he knew they did not live there. One of the men pulled out a two-foot metal pipe and challenged the guards to a fight. Ruiz warned the guards to "watch out" because "you know what happened to the last guards. We know where you park your cars. We're going to get you." Ruiz said, "We already know where you live. We follow you home." Ruiz also threatened to kill Orozco's family. Orozco was scared; he called 911 and the guards left. The group of men dispersed when they heard a police helicopter approaching.

On March 13 Orozco was on patrol at an apartment complex in the Santee area, together with his partner, Andrew Cutler. While they were responding to a resident's parking issue, Orozco saw Ruiz and Juan Lazaro² standing across the street with two other individuals.³ Cutler had encountered Ruiz for the first time in 2013, while working with a previous security partner. At that time Ruiz had admitted that he did not live at the property Cutler was monitoring; but when asked to leave, he challenged Cutler to fight.

On this occasion, the four individuals across the street were looking at Orozco and yelling obscenities and threats at him and Cutler. Orozco specifically heard Ruiz challenging him to fight. Ruiz said, "Come on, let's go." He was also saying "sur trece" and putting up his hand, raising three fingers in one hand and his index finger in the other. Lazaro was also yelling "sur trece" and making the same signals. The other two men started signaling, and they were yelling as well, but Orozco could not tell what they were saying. When the yelling and threats started, Orozco told Cutler to call the police, and Cutler did so.

² We take judicial notice of our unpublished opinion in co-defendant Lazaro's appeal in H042498.

³ Orozco had first encountered Lazaro earlier that week; on that prior occasion he had asked Lazaro if he lived at the property, and Lazaro replied that he did not. Orozco asked Lazaro multiple times to leave the property, whereupon Lazaro became aggressive and challenged Orozco to a fight. Lazaro was alone at the time; eventually he left the property.

At some point Ruiz began to cross the street toward Orozco, saying, "I'm going to kill you. Come on, let's fucking do this." He continued saying "sur trece" and making a one and a three with his hands. As Ruiz was walking, he took his shirt off, put his bag down, and continued to challenge Orozco to fight. He looked angry and very upset. Lazaro and the other two men stayed on the other side of the street while making noise and "doing things with their hands."

There was a small, three-foot fence between Orozco and Ruiz. Ruiz stopped at the fence about 25 feet from Orozco. As Cutler spoke on the phone, Ruiz put his shirt back on, picked up his bag, walked back across the street, and left with the other three men. Ruiz continued to yell things at Orozco as he was leaving. After the four men left, the police arrived, and Orozco and Cutler reported the incident to the officers.

Orozco was scared by Ruiz's threats because Ruiz had threatened him before. Ruiz would tell Orozco, "I know where you park your bike. I know where you guys park your cars," and "I'm going to get you guys." Orozco had seen Ruiz watching him as Orozco left work on his bike.

On March 19 and again on March 25, Detectives Brent McKim and Clayton Le interviewed Orozco and Cutler about the March 13 incident. On March 19, McKim and Le saw Lazaro "posting up" near the Santee Elementary School. "Posting up" means that a gang member is standing guard or acting as a sentry to represent the gang and mark its territory, while being on the lookout for officers or other gang members. When the officers approached Lazaro to talk to him, Lazaro ran away, but he was followed and arrested. Police searched Lazaro's cell phone and found photos of him and others throwing gang signs and making a "1" and a "3"; an Aztec symbol with the number "13"; a man with his forearms in the shape of a "T"; a blue bandana that said "Tami Lee Gangsters" with "VTG" and "13" on it; and a news article about a gang shooting in San Jose. The cell phone also contained a video of Lazaro talking about the Varrio Tami Lee Gangsters.

On March 20, while driving in the Santee neighborhood, Orozco and Cutler spotted Ruiz in the passenger seat of a black Jeep driven by a female driver. Orozco followed the Jeep while Cutler called the police. When the Jeep stopped at a stop sign, Ruiz got out with something in his hand and quickly walked toward Orozco's car, stopping about five to 10 feet from Orozco's car. Ruiz said, "Come on, Bitch" and "sur trece." He started putting his fingers up in the shape of "1" and "3." Ruiz seemed "really angry" and threatened to kill Orozco. He threw a can of soda at him, but Orozco ducked. As Ruiz got closer, he started throwing punches at Orozco, but in his testimony, Orozco could not remember whether any of the punches hit him. Ruiz then turned and ran. Orozco gave chase, and when he caught up to Ruiz, Ruiz grabbed his legs as if to pull him down. The two men began wrestling until Orozco ended up on top of Ruiz. Ruiz tried to take Orozco's gun and bit Orozco on the arm. Two or three minutes into the struggle on the ground, the police arrived and took Ruiz into custody.

The prosecution charged Lazaro and Ruiz jointly. In the second amended information count 1 charged Ruiz with making criminal threats (Pen. Code § 422)⁴ against Orozco in the January 27 incident. Count 2 charged both Ruiz and Lazaro with criminal threats against Orozco for the March 13 incident. Count 3 charged Ruiz with criminal threats against Cutler for the March 13 incident. Count 4 charged Ruiz with criminal threats for the March 20 incident. Count 5 charged both Ruiz and Lazaro with active participation in a criminal street gang. (§ 186.22, subd. (a).) As to Counts 1 through 4, the prosecution alleged that the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang. (§ 186.22, subd. (b)(1)(B).) Finally, the prosecution alleged that Ruiz had suffered a prior felony conviction, carjacking, which constituted a serious felony (§ 667, subd. (a)) and a violent or serious felony (§§ 667, subds. (b)-(i), 667.5, subd. (c).)

⁴ All further statutory references are to the Penal Code.

2. Gang Membership Evidence

Both McKim and Le testified at trial as experts in criminal street gangs in Santa Clara County. McKim was a sergeant by the time of trial, while Le was an investigator for the district attorney's office. Le opined that Lazaro and Ruiz were members of the Sureño gang. He explained that the Sureños were a criminal street gang based on the statutory criteria set forth in section 186.22. He estimated that there were more than 50 Sureño gang members in the San Jose area. The gang engages in a pattern of criminal activity including shooting into occupied dwellings, illegal possession of firearms, and vehicle thefts. Its primary activities consist of murder, assault with a deadly weapon, robberies, car thefts, and criminal threats.⁵ Its members associate with the color blue, the number "13," and the letter "M," which is the 13th letter in the alphabet and is associated with the Mexican Mafia. Sureños wear blue clothing, such as blue bandanas, belts, or sport jerseys for teams that bear blue colors, such as the Dodgers and Cowboys. They use common hand signs showing a one and three for 13, or at times letters indicating their specific subsets, or "hoods." They might have tattoos identifying their "hood." Norteño gang members, who associate with the number 14, the letter N, and the color red, are the primary enemies of Sureños.

Le described several subsets of Sureño gangs that protect various territories and neighborhoods in the San Jose area. These include the Varrio Tami Lee Gangsters

⁵ The prosecution presented evidence of three other offenses committed by Sureños or members of Sureño gang subsets. People's exhibit 6 contained a certified minute order reflecting a no contest plea by Luis Martinez in 2012 for assault with a deadly weapon with an admission to a gang enhancement under section 186.22, subdivision (b). Le testified that Martinez was a member of the Sureño gang. People's exhibit 7 contained a certified minute order reflecting the conviction of Sergio Rueda in 2011 for making criminal threats with a gang enhancement. Le testified that Rueda was a member of the Kollmar Vagos Trece subset of the Sureño gang. People's exhibit 8 contained a certified minute order for the conviction of Edgar Loya in 2012 for assault with a deadly weapon with a gang enhancement. Le testified that Loya was a member of the Sureño gang.

(VTG); Varrio Colonias Trece (VCT); Varrio Locos Trece; Varrio Sur Town (VST); Sur Santos Pride; and Kollmar Vagos Trece. Le explained that subsets of Sureños were more likely to "hang out" together than Norteños because the latter outnumbered Sureños in the San Jose area.

Based on his training and experience, Le expressed the opinion that Ruiz was a member of the Sureño gang. Ruiz had the word "Chicano" tattooed on his neck; a single dot under his left eye, with two piercings to make it three dots (a truncated representation of the number 13); a shark fin on his neck; "408" on the back of his neck; an Aztec warrior on his left arm, and the words "East Sider" on his arms. Neither the shark fin nor "408" was in and of itself a Sureño tattoo, but the dot under his eye did indicate Sureño affiliation. The Aztec warrior and "Chicano" were not specifically Sureño indicia, but they can represent racial pride, while "East Sider" is a "locale type of tattoo." Taken together, however, all of these tattoos indicated gang membership.

In a response to a hypothetical question based on the assumption that "Suspects 1 and 2" were Sureño gang members and given facts similar to those of the March 13 offense, Le opined that the offense would have been committed for the benefit of and in association with a criminal street gang. Le testified that the incident would have reinforced the reputation of the gang and their stranglehold on the area, thereby furthering and benefitting the gang. Le also opined that hypothetical incidents similar to the other incidents involving Ruiz were committed for the benefit of and in association with a criminal street gang.

⁶ Le also identified several facts linking Lazaro to the VTG subset of the Sureño gang. Lazaro had tattoos of one dot on his right hand and three dots on his left hand, signifying the number "13." Police found several photos on Lazaro's phone, including photos of him displaying a gang sign indicating "13" with his fingers; wearing a blue bandana with the words "Tami Lee Gangsters," VTG, and the number "13"; and standing in front of a street sign at the corner of Tami Lee Drive and Santee Drive. A video on Lazaro's phone showed him talking about VTG, "Tami Lee Gangsta," "1-3," and "banging," which means gang-banging.

Le also described numerous contacts between law enforcement and both Lazaro and Ruiz. As to Ruiz, the witness relied on computer-aided dispatch (CAD) reports represented in slides depicting the prior contacts. On July 6, 2011, police contacted Ruiz in a known gang area on the East Side of San Jose, in the company of Sergio Rueda, a "documented, tattooed, admitted" gang member and gang registrant. On January 4, 2012, police contacted Ruiz in the company of his brother, Jaime Ruiz. According to Le, Jaime Ruiz had "indications" of being a Sureño gang member based on his tattoo, the blue clothing he was wearing, and the location of the contact. On June 13, 2013, police contacted Ruiz in the company of Ricardo Gutierrez, a "documented" Sureño gang member. On June 27, 2013, Ruiz was contacted while associating with Peter Do, a documented and admitted Sureño gang member. On July 15, 2013, police contacted Ruiz in the company of Jose Sanchez, a documented Sureño gang member, in the VGT, VCT area. On August 11, 2013, police contacted Ruiz while he was again with Peter Do and Jose Sanchez. On August 20, 2013, when contacted by police Ruiz, who was with a known Sureño gang member named Juan Pineda, actually told the officer that he was a "'southerner.' " On August 23, 2013, police contacted Ruiz, again in the company of Jose Sanchez, during a service call in a Sureño neighborhood. On September 10, 2013, Officer Byers contacted Ruiz. In Le's view, the "gang tattoos noted by the officer, the dot with the two piercings to make it three dots, and then his frequenting the VGT, VCT area, Tami Lee and Santee" were all indications that Ruiz was a Sureño gang member.

Le also testified to two police contacts with Ruiz by Officer Nader Yasin on August 20 and September 2, 2013, during which Ruiz admitted to being a "southerner." In Le's opinion, the term "southerner" was interchangeable with "Sureño."

Officer Yasin himself testified for the prosecution on the subject of Ruiz's gang membership. On August 20, 2013, Yasin contacted Ruiz in the Santee neighborhood. He was with Juan Pineda. Yasin asked Ruiz "who he kicked it with," and Ruiz answered, "I'm a southerner." From this response Yasin understood that Ruiz associated with the

Sureño gang. Yasin then asked him if he "just kicks it with guys in the neighborhood" and Ruiz answered affirmatively. Pineda also claimed to be a southerner on this occasion. In another contact with Ruiz on September 2, 2013, Ruiz again admitted to "running with southerners." Ruiz told Yasin that the letters VTG in some nearby graffiti stood for "Varrio Tami Lee Gangsters," which Yasin explained was the primary Sureño group associated with that neighborhood.

3. Defense Evidence

Elizabeth Corona testified that Ruiz was her boyfriend between May 2013 to February 2015. Having grown up in the Santee area, she had friends who were associated with gangs. She was the driver of the Jeep on March 20, 2014. After they realized that they were being followed, they stopped at a stop sign and Ruiz got out of the Jeep. He asked the security guards, "Why are you following my girlfriend?" or "Why are you following us?" She was not watching him, so she did not see him throw a soda can; she did not pay attention until he was running next to the driver's side of the car. She saw a security guard chase Ruiz and trip him; then they wrestled on the ground until Ruiz got away and ran across the street. The guard again caught him, tackled him, put him in a "headlock," and punched him in the face a couple of times. During this entire episode Corona never heard Ruiz threaten to kill anyone, she did not hear him say "sur trece," and she never saw him show a one and a three with his hands. She affirmatively stated that Ruiz was not a gang member. He got the piercing in his face to match hers.

Raymond Frank knew Ruiz from living in the Santee area and playing sports together. He did not think Ruiz was a gang member; when they were together Ruiz did not wear gang clothing, say "sur trece," or speak of being a gang member. Frank was familiar with Hernandez and Cutler; they both tended to wave and say hello and Frank had never had any negative experiences with them. Orozco, on the other hand, made him uncomfortable; he would scowl and tell Frank and his friends in a disrespectful way that

they could not be "hanging out" in the area and must move on, even though Orozco saw them all the time and knew they resided in the neighborhood.

4. Verdict and Sentencing

Lazaro and Ruiz were tried jointly. The jury found Ruiz not guilty on Counts 1 and 4 but guilty on all other charges. It further found the gang enhancements true. Ruiz admitted the prior serious felony conviction.

Before sentencing Ruiz asked the court to strike his prior serious felony under section 1385, pursuant to *People v. Superior court (Romero)* (1996) 13 Cal.4th 497. The court granted the request. On September 28, 2016, the trial court sentenced Ruiz to prison for seven years eight months. The term consisted of the midterm of two years for count 2; eight months (one-third the midterm) for count 3; and five years for the prior serious felony enhancement. The court imposed the midterm of two years for count 5, but it stayed that term under section 654. The court struck the punishment for the gang enhancements in the interests of justice. Defendant then brought this timely appeal.

Discussion

Ruiz contends that his Sixth Amendment confrontation rights were violated when Le was permitted to testify about the contents of the police and dispatch reports detailing the police contacts with Ruiz and other alleged Sureño gang members. He relies on *Sanchez, supra*, 63 Cal.4th 665, in which our Supreme Court limited expert testimony based on case-specific hearsay. The People argue that Ruiz forfeited this challenge by failing to object to the testimony at trial. We reject the People's position and address the contention. (See *People v. Jeffrey G.* (2017) 13 Cal.App.5th 501, 507-508 [no forfeiture for failure to object in case tried before *Sanchez* because any objection to the experts' testimony would have been overruled under pre-*Sanchez* decisions]; *People v. Meraz* (2016) 6 Cal.App.5th 1162, 1170, fn. 7 [same].)

1. Legal Framework

The Confrontation Clause of the Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." (U.S. Const., 6th Amend.) The Confrontation Clause thus bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination." (*Crawford v. Washington* (2004) 541 U.S. 36, 53-54, 59 (*Crawford*).) This bar applies only to testimonial statements; admission of nontestimonial statements, while subject to state law hearsay rules, does not violate the Confrontation Clause. (*Id.* at p. 53.)

In Sanchez, the California Supreme Court held that Crawford bars the introduction of case-specific testimonial hearsay by a gang expert. "When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay. It cannot logically be maintained that the statements are not being admitted for their truth. If the case is one in which a prosecution expert seeks to relate testimonial hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing." (Sanchez, supra, 63 Cal.4th at p. 686, fn. omitted.)

Whether a fact related by an expert is case-specific versus general knowledge determines its admissibility. An expert "may still rely on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so." (*Sanchez, supra*, 63 Cal.4th at p. 685.) In that sense, the court's decision did not "affect the traditional latitude granted to experts to describe background information and knowledge in the area of his expertise." (*Ibid.*) But what "an expert *cannot* do is relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception." (*Id.* at p. 686.) The *Sanchez* court

noted that there is general agreement that "[t]estimonial statements are those made primarily to memorialize facts relating to past criminal activity, which could be used like trial testimony." (*Id.* at p. 689.)

"[A] court addressing the admissibility of out-of-court statements must engage in a two-step analysis. The first step is a traditional hearsay inquiry: Is the statement one made out of court; is it offered to prove the truth of the facts it asserts; and does it fall under a hearsay exception? If a hearsay statement is being offered by the prosecution in a criminal case, and the *Crawford* limitations of unavailability, as well as cross-examination or forfeiture, are not satisfied, a second analytical step is required. Admission of such a statement violates the right to confrontation if the statement is *testimonial hearsay*, as the high court defines that term." (*Sanchez, supra*, 63 Cal.4th at p. 680.)

We review de novo whether a statement is testimonial and therefore implicates the Confrontation Clause. (*People v. Nelson* (2010) 190 Cal.App.4th 1453, 1466.) "We evaluate the primary purpose for which the statement was given and taken under an objective standard, 'considering all the circumstances that might reasonably bear on the intent of the participants in the conversation.' " (*Ibid.*, citing *People v. Cage* (2007) 40 Cal.4th 965, 984.) Improper admission of testimonial statements is an error of federal constitutional magnitude. (*Sanchez, supra*, 63 Cal.4th at p. 685.) To show that any such error is harmless, the state bears the burden of showing beyond a reasonable doubt that the error did not contribute to the verdict obtained. (*Chapman v. California* (1967) 386 U.S. 18; *People v. Garton* (2018) 4 Cal.5th 485, 507; *People v. Rutterschmidt* (2012) 55 Cal.4th 650, 661.)

2. Application of Sanchez to Le's Expert Testimony

The court in *Sanchez* emphasized that historically experts have been allowed to testify to general knowledge in their field of expertise notwithstanding the hearsay rule. (*Sanchez*, *supra*, 63 Cal.4th at p. 676.) "'[T]he common law recognized that experts

frequently acquired their knowledge from hearsay, and that "to reject a professional physician or mathematician because the fact or some facts to which he testifies are known to him only upon the authority of others would be to ignore the accepted methods of professional work and to insist on . . . impossible standards." Thus, the common law accepted that an expert's general knowledge often came from inadmissible evidence." (Ibid., quoting Volek, Federal Rule of Evidence 703: The Back Door and the Confrontation Clause, Ten Years Later (2011) 80 Fordham L.Rev. 959, 965, fn. omitted.) By contrast, an expert is generally precluded from testifying to "case-specific" facts. "Case-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried. Generally, parties try to establish the facts on which their theory of the case depends by calling witnesses with personal knowledge of those case-specific facts. An expert may then testify about more generalized information to help jurors understand the significance of those case-specific facts. An expert is also allowed to give an opinion about what those facts may mean. The expert is generally not permitted, however, to supply case-specific facts about which he has no personal knowledge." (Sanchez, supra, 63 Cal.4th at p. 676.)

Here, a significant part of the expert's testimony pertained to the Sureños' primary activities. Some of the opinions Le offered on this subject were based on his personal knowledge—including his investigations, his contacts with gang members, cases he had investigated, interviews with other detectives, and research on previous cases. Even to the extent that his testimony about primary gang activities was based on hearsay, it did not contravene *Sanchez*, because it did not "relat[e] to the particular events and participants" accused in this case. (*Sanchez*, *supra*, 63 Cal.4th at p. 676.) It was therefore not inadmissible under the Confrontation Clause.

Ruiz's focus on appeal, however, is on the testimony describing prior gang-related police contacts with him and other alleged Sureño members. His position is supported by the *Sanchez* holding. Unlike the certified records of conviction introduced at trial, the

police officers' CAD reports contained hearsay, and the prosecution did not present the underlying declarants for cross-examination.

The People maintain that the testimony was admissible because none of it was testimonial. We disagree. The testimony at issue is comparable to the police reports described in expert testimony deemed inadmissible in *Sanchez*. "When the People offer statements about a completed crime, made to an investigating officer by a nontestifying witness, *Crawford* teaches those hearsay statements are generally testimonial unless they are made in the context of an ongoing emergency as in [*Davis v. Washington* (2006) 547 U.S. 813] and [*Michigan v. Bryant* (2011) 562 U.S. 344], or for some primary purpose other than preserving facts for use at trial. Further, testimonial statements do not become less so simply because an officer summarizes a verbatim statement or compiles the descriptions of multiple witnesses. As the *Davis* court observed: '[W]e do not think it conceivable that the protections of the Confrontation Clause can readily be evaded by having a note-taking policeman *recite* the unsworn hearsay testimony of the declarant, instead of having the declarant sign a deposition. Indeed, if there is one point for which no case—English or early American, state or federal—can be cited, that is it.' "
(*Sanchez, supra*, 63 Cal.4th at pp. 694-695, quoting *Davis, supra*, at p. 826.)

We conclude that the admission of Le's testimony describing prior law enforcement contacts with Ruiz violated the Confrontation Clause. We do not, however, agree with Ruiz that he was prejudiced by the admission of this hearsay evidence. The federal harmless error analysis under *Chapman*, requires the Attorney General to show beyond a reasonable doubt that the error did not contribute to the verdict. (*People v. Pearson* (2013) 56 Cal.4th 393, 463.) "'"To say that an error did not contribute to the ensuing verdict is . . . to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record." [Citation.] Thus, the focus is on what the jury actually decided and whether the error might have tainted its

decision. That is to say, the issue is "whether the . . . verdict actually rendered in this trial was surely unattributable to the error." [Citations.] (*Ibid.*)

Even apart from any erroneously admitted testimonial statements, the evidence of defendant's gang membership was strong. Orozco testified that at the time of the March 13 incident both Lazaro and Ruiz held up one finger on one hand and three fingers on the other hand and yelled "sur trece." The gang expert properly explained that Sureños associate with the number 13 and use hand signs to show "1-3" or "13". Le also noted that Ruiz had a single dot under his eye, with two piercings to make three dots, representing a "truncated form of the number 13, and 13 is used by Sureños as a marker or identifier." Ruiz's other markings—the number 408, the Aztec warrior, the names "Chicano," and "East Sider"—indicated gang affiliation when taken together. He further testified that the phrase "sur trece" is associated with Sureños. Officer Yasin also testified that in his direct contacts with Ruiz in August and September 2013, Ruiz admitted to being a "southerner"—which amounted to identifying as a Sureño—and "running with southerners." Moreover, during the March 13 events Ruiz was in the company of Lazaro, whose clothing, tattoo, and behavior (including tagging "VTG" on the wall of a Caltrain overpass and keeping a picture of himself flashing a Sureño gang sign on his phone) were clear evidence of Sureño affiliation. In light of all this evidence, the Confrontation Clause violation was harmless beyond a reasonable doubt. (See *People* v. Ochoa (2017) 7 Cal. App. 5th 575, 586-587 [though testimony that individuals had admitted gang membership may have related inadmissible testimonial hearsay, any Confrontation Clause violation was harmless beyond a reasonable doubt because "there was clear evidence of gang membership untainted by a [C]onfrontation [C]lause violation"].)

Disposition

The judgment is affirmed.

	ELIA, ACTING P. J.	
WE CONCUR:		
BAMATTRE-MANOUKIAN, J.	-	
MIHARA, J.	-	